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No. 07-558

IN THE

Supreme Court of the United States

CATHERINE R. MAFFEI, *et al.*,

Petitioners,

v.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Petition for a Writ of *Certiorari*, where the Massachusetts Supreme Judicial Court's ("SJC's") Opinion affirming the Middlesex (Massachusetts) Superior Court's ("Superior Court's") dismissal of Petitioners' claims does not conflict with a decision of this Court, or a Court of Appeals, or other State Courts, and where the SJC's Opinion does not implicate an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, Roman Catholic Archbishop of Boston, a Corporation Sole, does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioners have presented no "compelling reasons" for their Petition for a Writ of *Certiorari* ("Petition") to be granted. Specifically, Petitioners fail to demonstrate that the Commonwealth of SJC's July 24, 2007, Opinion is in conflict with decisions of this Court, other state courts of last resort, or a Court of Appeals; or that the SJC decided an important federal question that has not been settled by this Court.[1] The SJC held that insofar as Petitioners' causes of action were predicated on the alleged fiduciary or confidential relationship between a member of the Roman Catholic Church clergy and his congregants, their claims raised matters of internal church governance which a civil court is precluded from considering pursuant to the First Amendment to the United States Constitution.[2] Consistent with the First Amendment, a court may not inquire into any alleged pastoral duties owed by the Roman Catholic priesthood to its laity concerning matters of Canon Law.[3]

[1] *See* Sup. Ct. R. 10(a)-(c).

[2] The First Amendment to the United States Constitution states, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

[3] *See*, e.g., *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976); *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 785, 625 N.E.2d 1352, *cert. denied*, 511 U.S. 1142, 114 S. Ct. 2164, 128 L. Ed. 2d 887 (1994).

I. Procedural History

Petitioners filed a six-count verified complaint on June 8, 2005, with the Superior Court.[4] They subsequently moved for *lis pendens* on the property at issue and for a speedy trial. Respondent moved to dismiss the complaint pursuant to Mass. R. Civ. P. 12(b)(6). The judge denied Respondent's motion to dismiss and allowed Petitioners' motion for *lis pendens* and motion for a speedy trial. Thereafter, all parties moved for summary judgment. The Superior Court granted summary judgment in favor of Respondent, and denied summary judgment with regard to Petitioners. Petitioners applied for and were granted direct appellate review by the SJC. The SJC on May 25, 2007, issued its decision affirming the judgment of the Superior Court. Petitioners filed a petition for rehearing. On July 24, 2007, the SJC issued amendments to its decision, and otherwise denied the petition for rehearing. The amendments to the Court's opinion are noted in the decision of the SJC at 449 Mass. 235 (2007).

[4] Count I sought declaratory and injunctive relief to, among other things, declare the alleged oral agreement between the RCAB and the Maffei family enforceable, and for reversion of the property to the family; Count II sought to impose a resulting trust on the RCAB in the Maffeis' favor to enforce a conditional gift; Count III was a claim by the Maffeis for "breach of fiduciary duty and constructive trust"; Count IV was the Maffeis' breach of contract claim; Count V, their claim for negligent misrepresentation; and Count VI, Petitioner Hanafin's claim for negligent misrepresentation.

II. Statement of the Facts

The facts are taken from uncontested material of record, as viewed in a light most favorable to the Petitioners.[5] Respondent, Roman Catholic Archbishop of Boston, a Corporation Sole, was incorporated by the Massachusetts Legislature in 1897, and empowered, among other things, to "receive, take and hold, by sale, gift, lease, devise or otherwise, real and personal estate of every description, for religious, charitable and burial purposes, and to manage and dispose of the same for the religious and charitable purposes of the Roman Catholic church."[6] In the 1940's, Reverend Robert H. Lord of St. Paul's Parish in Wellesley sought permission from Respondent to purchase land to establish a church to serve the needs of the growing Roman Catholic population in Natick and Wellesley, Massachusetts. Respondent approved the request, and Rev. Lord began searching for a suitable location for the new church. He identified a tract of approximately eight acres of land in Wellesley as "the best site – and, indeed, the only good site-for such a church."[7] The land was held in equal shares as tenants in common by the six children of James Maffei.

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[5] The evidence contained in the summary judgment record consisted of the Petitioners' Verified Complaint and a statement given under oath by Petitioner Catherine Maffei.

[6] Mass. St. 1897, c. 506, § 2.

[7] *Maffei, et al. v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 238, 867 N.E.2d 300 (2007).

In 1946, Reverend Lord had several conversations with one of James Maffei's sons, Waldo Maffei, in Waldo's home during which he inquired about the Maffei family donating the property to the Respondent for use as the site of a church. The conversations purportedly occurred in the presence or within the hearing of his wife, Petitioner Catherine Maffei. According to a "statement under oath" that Ms. Maffei gave to her attorneys in May, 2005, Reverend Lord came to the Maffei house several times to explore obtaining the property for use as a church. Waldo thereafter contacted his sister and four brothers about Respondent's request to donate the land, but the four brothers rejected the request. On the third visit to Waldo's home, in the presence of Catherine, Reverend Lord allegedly told Waldo that the church would be named "St. James" in honor of Waldo's father, and that the church would remain a tribute to James "forever." He also told Waldo that the Respondent would pay each of the other four Maffei brothers $3,000 to transfer their respective interests in the property. According to Catherine, who is the sole surviving participant of these events,[8] during negotiations for the property Reverend Lord did not inform any members of the Maffei family that Canon Law permitted the possible closure of the church in the future.

The Maffei family agreed to transfer the property to the RCAB for $12,000 (representing payment of $3,000 to each of Waldo's four brothers). The parties did not enter into a purchase and sales agreement, but executed a deed transferring all legal and beneficial interest in

[8] Reverend Lord died in 1954, and Waldo Maffei died on January 13, 2003.

the property to the RCAB in exchange "for consideration paid." An attorney hired by Respondent prepared the deed, which the Maffei siblings had the opportunity to read and then sign before a notary in Waldo Maffei's home.[9] The spouses of the four married Maffei brothers, Catherine among them, also executed the deed, relinquishing their rights of dower and homestead. The deed, in fee simple absolute, makes no reference to naming the church in honor of James, or any alleged agreement concerning using the property "forever" as a church. The deed contains no reservation of rights or right to enter or retake the property. In 1950, Respondent established St. James as a parish, and by 1958, a new St. James Church was constructed.

In 1999, an article appeared in a local newspaper speculating that the RCAB had included St. James on a list of churches to be closed. Shortly thereafter, Reverend George Vartzelis, then pastor of St. James, informed the parish members that St. James would remain open. In 2002, Respondent launched a capital endowment campaign in which each of its then 368 parishes was to raise a specific amount in donations. St. James's target was $370,000. In conjunction with the capital campaign, Rev. Vartzelis sent solicitation letters to his parishioners requesting funds for the RCAB campaign, and also asked for $35,000 in donations to refurbish St. James "to keep it as good as it needs to be

[9] Although the verified complaint states that counsel hired by Respondent prepared the deed and that the Petitioners were not represented by counsel when they sold the property, Catherine in her sworn statement stated that one of the Maffeis' neighbors, an attorney, prepared the deed at their request and was present when the deed was executed.

and as we all want it to be now and for the future." There is no evidence that Rev. Vartzelis, at the time he made these statements, had any knowledge of plans by the Respondent to close the church. Furthermore, there is no evidence at that time that Respondent had made any decision regarding the future of St. James. Based on Rev. Vartzelis's representation that a gift would benefit St. James "now and for the future," Petitioner Hanafin donated $35,000 to the church. The gift was used for the benefit of St. James Church at the time it was made.

Rev. Vartzelis retired in the spring of 2003, and he was replaced with an administrator, an interim position, rather than with a pastor. In January of 2004, Respondent required geographic grouping of parishes to investigate and report on which parishes in each group might be closed in a "reconfiguration" plan. The group to which St. James belonged reported in their "reconfiguration response" that St. James would be the "most feasible" church to close as it had "the smallest number of recorded families and individuals; the smallest Mass count; the smallest religious education program; and the smallest sacramental index." On October 5, 2004, Respondent issued a decree of suppression of St. James, effective October 31, 2004. The decree reassigned the territory covered by St. James to other parishes, transferred the canonical registers of St. James to another parish, and transferred "the goods and obligations" of St. James to Respondent. Respondent retained legal title to the property.

REASONS FOR DENYING THE PETITION

There exists no conflict between the Opinion of the SJC with decisions of this Court, other state courts of last resort, or a Court of Appeals concerning whether the First Amendment prevents a court from considering the "trust and confidence" which a congregant reposes in a member of the clergy in determining whether there has been a breach of that "trust and confidence". There also exists no conflict between the Opinion of the SJC with decisions of this Court, other state courts of last resort, or a Court of Appeals concerning whether the First Amendment prohibits a court from considering a tenet of a religious order where the matter has not been submitted to an ecclesiastical tribunal. The Opinion of the SJC does not implicate an important federal question that has not been settled by this Court.

I. The Opinion of the SJC does not conflict with a decision of this Court or a Court of Appeals, or other state courts of last resort; and the Opinion of the SJC does not implicate an important federal question that has not been settled by this Court.

A. The Opinion of the SJC Does Not Conflict with Other State Court Decisions Concerning the Court's Consideration of the "Trust and Confidence" which a Congregant May Repose in a Member of the Clergy.

Petitioners argue that the SJC wrongly held that the First Amendment prevents a Court from considering the "trust and confidence" which a Congregant places in a member of the Clergy in determining whether there has

been a breach of trust with respect to the Congregant's gift. In its decision, the SJC held that the First Amendment protects an individual's freedom to worship, or not to worship, as he or she chooses.[10] The Court also held that the First Amendment "places beyond our jurisdiction disputes involving church doctrine, Canon Law, polity, discipline, and ministerial relationships."[11] The SJC further held that is has jurisdiction over property disputes if and to the extent, and only to the extent, that they are capable of resolution under "neutral principles of law" – which this Court has defined as "well-established concepts of trust and property law familiar to lawyers and judges."[12] The SJC held that it is forbidden from ruling upon the religious obligations, if any, of a clergy member to his or her congregants, or of the "trust and confidence" that may be engendered in congregants solely by virtue of the clergy's religious authority.[13]

Petitioners have cited decisions from other state courts which have ruled that the inherent trust between

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[10] *See Maffei* at 243.

[11] *See id.* (*citing Williams v. Episcopal Diocese of Mass.*, 436 Mass. 574, 579, 766 N.E.2d 820 (2002). *See Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 515, 773 N.E.2d 929 (2002); *Wheeler v. Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 61, 389 N.E.2d 966, *cert. denied*, 444 U.S. 899, 100 S. Ct. 208, 62 L. Ed. 2d 135 (1979).

[12] *See Jones v. Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).

[13] *See Maffei* at 244.

a Congregant and a member of the Clergy may be considered to the extent that a gift or transaction carries a presumption of undue influence and that the burden is imposed upon a spiritual adviser to prove that the donor was free from influence.[14] The SJC held that these cases "concern circumstances of repeated, affirmative false statements by clergy to the plaintiff that would constitute fraud apart from any religious affinity between the parties."[15] The Court did note in its decision that the cases cited by Petitioners do contain statements whereby one who acts in the capacity of "spiritual ascendancy" over a donor has a confidential relationship to the donor that requires the spiritual advisor to justify any gift made to him or her by the donor. However, Petitioners admit that the cited decisions from other state courts were distinguished by the Court in its decision.[16] The Court, after consideration of the cases in question, stated that because those decisions predate the Supreme Court's First Amendment jurisprudence as reflected in *Serbian Eastern Orthodox Diocese for the U.S. & Can. v. Milivojevich*,[17] along with its own precedent in *Fortin*

[14] *Nelson v. Dodge*, 68 A. 2d 51, 57 (Supr. Ct. RI 1949), *Corrigan v. Pironi*, 48 N.J. Eq. 67, 23 Atl. 355 (1891), *Farmer v. O'Carroll*, 162 Md. 431, 160 A. 12, 17, 18 (Ct. App. Md. 1932), and *Brown v. Father Divine et als.*, 173 Misc. 1029, 18 N.Y.S. 2d 544 (Supr. Ct., Special Term, New York County, 1940).

[15] *See Maffei* at 249, n. 24.

[16] *See* Petition for a Writ of *Certiorari* at p. 21.

[17] 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

v. Roman Catholic Bishop of Worcester,[18] those cases were not afforded "weighty authority".[19]

Petitioners next argue that the statement by the SJC that the previously cited cases came after this Court's First Amendment jurisprudence reflected in *Serbian* and *Fortin* ignores the decision by the District of Columbia Court of Appeals in *Roberts-Douglas v. Meares*.[20] In *Roberts-Douglas*, the District of Columbia Court of Appeals ruled that in determining whether there was undue influence in connection with a gift from a Congregant, a court could consider the fact that there were threats of divine retribution from the pulpit, particularly where there were similar threats imposed upon the donor on a "one to one" basis. The Court in *Roberts-Douglas* ruled that "to permit someone to engage in activities which would otherwise be proscribed by law, upon the ground that such conduct is required by his or her religion, would make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." The decision in *Roberts-Douglas* is clearly distinguishable from the SJC's decision. In this case, there are no allegations of threats of divine

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[18] 416 Mass. 781, 625 N.E.2d 1352, *cert. denied*, 511 U.S. 1142, 114 S. Ct. 2164, 128 L. Ed. 2d 887 (1994) (civil courts must accept the decisions of a hierarchical church regarding matters of discipline, faith, internal organization or ecclesiastical rule, custom or law).

[19] *Maffei* at 250, n. 24.

[20] 624 A. 2d 405, 423 (D.C. App. 1992).

retribution by Rev. Lord. If there were threats or intimidation, the case could be decided upon "neutral principles of law", as enumerated in *Jones v. Wolf*. As referenced above, the SJC clearly stated that circumstances involving "repeated, affirmative false statements" by a member of the clergy, such as Rev. Lord, to parishioners, such as the Maffeis "would constitute fraud apart from any religious affinity between the parties",[21] and thus would be reviewable under "neutral principles of law". The SJC carefully considered the facts in the case at bar, and decided that the myriad "inquiries bearing on resolution of the Maffeis' fiduciary claims would take [it] far afield of 'neutral principles of law.'"[22]

Finally, Petitioners claim that the Opinion of the SJC incorrectly applied the principles laid down by this Court in *Serbian E. Orthodox Diocese*. Petitioners are mistakenly relying upon a passage from that case quoting *Watson v. James* which the Petitioners assert limits First Amendment protection to "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried."[23] This Court clearly did not intend to limit First Amendment religious protections with this statement,

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[21] *See Maffei* at 249, n.24.

[22] *See id.* at 250.

[23] *Serbian E. Orthodox Diocese* at 710 (quoting *Watson v. James*, 13 Wall. 679, 727 (1872)); *see also* Petition for a Writ of *Certiorari* at p. 30.

as put forth by Petitioners. On the contrary, this Court intended to limit the role of civil courts in the resolution of religious controversies that incidentally affect matters of common law. In fact, the language immediately following the above quote captures the substance of this Court's reasoning:

"In language having 'a clear constitutional ring,' *Watson* reasoned:"[24]

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be

[24] *Id.* at 710 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 446, 89 S.Ct. 601 (1969)).

binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."[25]

B. The Decision of the SJC Does Not Conflict with a Decision of the United States Second Circuit Court of Appeals with Respect to a Court's Jurisdiction to Consider Ecclesiastical Law.

Petitioners contend that Opinion of the SJC conflicts with a decision by the United States Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Diocese*.[26] In *Martinelli*, the plaintiff, a minor, claimed that he was a victim of sexual assault by a clergyman and that the sexual assault was in violation of the fiduciary relationship between the plaintiff and the Diocese. The Second Circuit upheld the jury's finding that a fiduciary relationship existed between the plaintiff and the Diocese and ruled that in determining whether a fiduciary relationship existed, the First Amendment did not prevent the consideration of religious doctrines and practices. Specifically, the Second Circuit concluded that there was sufficient evidence for a jury to find the existence of a fiduciary relationship between the Bridgeport Roman Catholic Diocese and a former student who, as a minor, had been sexually abused by a

[25] *Id.* at 710-711 (quoting *Watson v. James* at 728-729).

[26] 196 F.3d 409 (2d Cir. 1999).

priest.[27] The plaintiff had been a student at a diocesan school that employed the priest who committed the abuse, and the Second Circuit found that the Diocese knew that the plaintiff had a "special and privileged relationship" with the priest as a result of his membership in a small group of boys mentored by the priest.[28] The Court ruled that the particular facts of that case supported the conclusion that "the Diocese's relationship with [the plaintiff], based on the particulars of [the plaintiff's] ties to [the priest] and the Diocese's knowledge and sponsorship of that relationship, was of a fiduciary nature."[29]

The *Martinelli* decision is distinguishable from the case at bar, as the Second Circuit in *Martinelli* based its finding of a fiduciary relationship not on the general clergy-parishioner relationship, but rather on the plaintiff's particular ties to an abusive priest and the Diocese's knowledge and sponsorship of that relationship. The allegations considered in *Martinelli* clearly distinguish a child's prolonged and extensive involvement with a church as a student and altar boy from an adult who asserts nothing more than general membership in a religious organization, as is the case here. The SJC pointed out that the "fatal flaw" in the Plaintiff's argument that a fiduciary relationship existed between the Maffeis and Rev. Lord is the Maffeis'

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[27] *Id.* at 413, 429-30.

[28] *Id.* at 429.

[29] *Id.*

contention that the relationship was principally a result of their "shared religious affiliation" and nothing more.[30]

II. A definitive ruling by the Supreme Court to determine whether donors to religious institutions have the same rights as donors to other charitable institutions is not appropriate.

Petitioners contend that review by this Court is necessary to resolve the issue of whether religious institutions use gifts from donors for the intended purpose. Petitioners fail to elaborate upon the basis of this claim, leaving one to assume that Petitioners are referring to the gift of $35,000 to St. James parish by Petitioner Hanafin. Petitioners contend that Respondent made a negligent misrepresentation when, in 2002, the pastor of St. James the Great solicited funds for refurbishing the parish for "now and for the future". Petitioners fail to address the fact that the SJC ruled that there was no evidence (1) that the pastor of the parish used Ms. Hanafin's donation for anything other than the stated purpose; and (2) that the pastor failed to exercise reasonable care or competence in using the phrase "for the future" while soliciting funds.

Petitioners also imply that there is no forum for review of gifts to religious institutions. This simply is not so. Chapter 12, Section 8 of the Massachusetts General Laws provides, in pertinent part: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the

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[30] *See Maffei* at 248.

administration thereof." The Massachusetts Attorney General's authority under the statute encompasses charitable "assets" in general as well as charitable "funds".[31]

CONCLUSION

The Petitioners have not established any compelling reasons for this Court to grant the Petition. Therefore, the Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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[31] *See Weaver v. Wood*, 425 Mass. 270, 275, 680 N.E.2d 918 (1997).